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Before The
Federal Communications CommissionFEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re:

Notice of Proposed
Rulemaking To Add
Marion, Indiana
To The Indianapolis-
Bloomington Designated
Market Under 76.51

MM Docket No. 93-260

To: Chief, Mass Media Bureau

COMMENTS OF MARION T.V., INC.

Marion T.V., Inc., licensee of Station WMCC-TV, Marion, Indiana ("WMCC-TV"), hereby submits, pursuant to Section 1.415 of the Commission's Rules (47 C.F.R. §1.415), comments in support of the above-captioned proposal to amend Section 76.51 of the Commission's Rules to change the designation of the "Indianapolis-Bloomington, Indiana" television market to "Indianapolis-Bloomington-Marion, Indiana".

WMCC-TV originally requested the Commission to initiate this proceeding, through the filing, on June 9, 1993, of a Petition for Rulemaking. The Petition for Rulemaking set forth the factual and analytical arguments militating in favor of a grant of the Petition and ultimate adoption of the proposed amendment to Section 76.51 of the Rules.

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When it issued the Notice of Proposed Rule Making in this proceeding (DA93-1156, released October 7, 1993), the Commission stated: "It appears from the information before us that Station WMCC-TV and stations licensed to communities in the Indianapolis-Bloomington television market do compete for audiences and advertisers throughout much of the proposed combined market area, and that sufficient evidence has been presented tending to demonstrate commonality between [Marion] and the market as a whole. Moreover, Petitioner's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market." Id. at ¶10.

To the best of WMCC-TV's knowledge, none of the factual or analytical underpinnings of its Petition for Rulemaking has changed in any material respect since the filing of the Petition. Rather than reiterate the discussion contained in the Petition, WMCC-TV accordingly incorporates herein by reference the substance of its June 9, 1993 Petition for Rulemaking in

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Mass Media Bureau

PETITION FOR RULEMAKING

Marion T.V., Inc., licensee of Station WMCC-TV,
Marion, Indiana ("WMCC-TV"), hereby requests the
Commission to initiate a rulemaking proceeding to amend
Section 76.51(a)(16) of the Commission's Rules to add
Marion to the Indianapolis-Bloomington hyphenated
television market. WMCC-TV further requests the
Commission to act pursuant to an expedited rulemaking
procedure through issuance of a Notice of Proposed
Rulemaking without prior public comment.¹

"The hyphenation of a market is based on the
premise that stations licensed to any of the named

¹ See Report and Order, MM Docket Nos. 92-259, 90-4 and
92-295 (released March 29, 1993) at Paragraph 50.
("Where appropriate, we will consider such cases under
an expedited rulemaking procedure whereby we will issue
a notice of proposed rulemaking based on the submitted
petition without first seeking public comment on whether
we should do so.") (The Report and Order is hereinafter
referred to as the "Must-Carry Report and Order").

communities in the hyphenated market do, in fact, compete with all stations licensed to such communities." Request for Amendment of Section 76.51 (Atlanta-Rome, Georgia, 7 FCC Rcd 8591, 8592 (1993)). As shown below, WMCC-TV in Marion competes with the other stations in the Indianapolis television market; that Marion has not been designated a part of the market before now is due solely to an historical anomaly which the Commission should now correct.

I. MARION IS PART OF THE INDIANAPOLIS-BLOOMINGTON MARKET

A. Background of 76.51(a)(16).

When the Commission adopted Section 76.51 of the Rules in 1972, the television markets established in the Rule tracked Arbitron's ADI designations for the year 1970. Cable Television Report and Order, 36 FCC 2d 143, 171-72 (1972). Arbitron's ADI designations, in turn, were then and are now based upon viewing of operating television stations. (1993 Broadcasting and Cable Yearbook at C-133.) In 1970, operating television stations existed in Indianapolis and in Bloomington (WTTV, Channel 4, in Bloomington, has been in operation since 1949); however, there was no operating station at

that time in Marion.² For that reason, Marion could not originally have been included in Arbitron's 1970 Indianapolis-Bloomington ADI designation and is accordingly today not an Indianapolis hyphenated community under Section 76.51 of the Rules.

B. The Indianapolis-Bloomington ADI Today.

WMCC-TV is today part of both the Indianapolis ADI, as designated by Arbitron, and the Indianapolis DMA, as designated by Nielsen.

The Indianapolis-Bloomington ADI is comprised of ten commercial television stations -- five licensed to Indianapolis (WHMB-40; WISH-8; WRTV-6; WTHR-13 and WXIN-59); three to Bloomington (WCLJ-42; WIIB-63 and WTTV-4); one to Kokomo (WTTK-29); and one to Marion (WMCC-23).

The only two commercial stations in the ADI that are excluded from the Indianapolis-Bloomington hyphenated television market as listed in Section 76.51 of the Commission's Rules are WMCC-TV in Marion and WTTK-TV in Kokomo. As shown at Exhibit 1 hereto, the

² Station WTAF-TV had operated on Channel 31 in Marion until it went off the air in 1969. Thereafter Channel 23 was substituted for Channel 31 in Marion, and WMCC-TV commenced operation on Channel 23 in 1987. TV Channel Assignment at Marion, Ind., 20 R.R.2d 1568 (1970). Marion has been part of the Indianapolis ADI since that time.

Kokomo station, a satellite of WTTV in Bloomington, does not place a Grade B contour over any of Indianapolis. WMCC-TV is the only commercial station in the market providing service to Indianapolis that is forced to operate under different rules than those applicable to all of its competitors in the ADI.

C. WMCC-TV Provides Good Coverage Of The ADI.

As shown at Exhibit 1 hereto, WMCC-TV places a Grade A contour over Indianapolis, and a Grade B contour over all of Marion County, in which Indianapolis is located. Only a fraction of WMCC's Grade B contour falls beyond the Indianapolis ADI. See Exhibit 1.

Further, as shown at Exhibit 2 hereto, WMCC-TV's area coverage of the Indianapolis ADI is comparable to that of the Indianapolis UHF stations, WHMB-TV and WXIN-TV, and of the Bloomington UHF stations, WIIB-TV and WCLJ-TV. WMCC-TV covers approximately 47 per cent of the ADI; the other UHF stations in the ADI cover from 41.1 per cent to 48.3 per cent of the ADI.³

³ These comparisons are relative only to the UHF stations in the ADI. There are three VHF Indianapolis stations, WISH, WRTV and WTHR, and one Bloomington VHF, WTTV. The coverages of the VHF's exceed those of the UHF's, which is typical for almost all TV markets.

D. WMCC-TV Serves The Same Area
As The Other ADI Stations.

The Grade B contours of Indianapolis Stations WRTV, WISH and WTHR all cover Marion, as well as virtually all of Grant County, in which Marion is located. In addition, the Grade B contour for Indianapolis Stations WHMB and WXIN fall within about five miles of Marion. In this sense, Marion compares very favorably with Bloomington; neither Indianapolis Stations WHMB nor WXIN places a Grade B contour over Bloomington, even though Bloomington forms part of the Indianapolis hyphenated television market in Section 76.51 of the Rules.

WMCC-TV's transmitter is located approximately 28 miles from Indianapolis. This is comparable to Bloomington Stations WCLJ and WIIB, whose transmitters are approximately 25 miles from downtown Indianapolis.⁴

As shown at Exhibit 1 hereto, WMCC-TV's service area significantly overlaps those of the other stations

⁴ In issuing a Notice of Proposed Rulemaking to consider addition of Rome, Georgia to the Atlanta market (a proposal that the Commission ultimately adopted), the Commission recognized that location of a station's transmitter near those of other stations licensed to hyphenated communities is an important factor in determining whether to add that station's community to the market designations of Section 76.51. Request for Amendment of Section 76.51 (Atlanta-Rome), 7 FCC Rcd 8591, 8592 (1993).

in the ADI. The station's Grade B contour is virtually encompassed by the Grade B contours for Indianapolis Stations WTHR, WRTV and WISH. There is significant overlap between WMCC-TV's Grade B contour, and those of the two Indianapolis UHF stations and the three Bloomington stations.

While WMCC-TV's signal covers significant areas in common with its Indianapolis and Bloomington competitors, its inability to compete on a level playing field through its exclusion from Section 76.51(a)(16) compromises its coverage in cable homes.

Each of the Indianapolis, Bloomington and Marion commercial television stations is entitled to mandatory carriage on all cable systems serving the Indianapolis ADI. As part of this entitlement, each of these stations, with the exception of WMCC-TV, is also free to demand carriage on any cable system within the ADI serving communities located within 35 miles from either of the Bloomington or Indianapolis population centers, free of the requirement that they pay "distant signal" copyright charges. WMCC-TV, on the other hand, must pay such copyright charges in order to secure carriage on these same cable systems, with the exception of those systems located in communities in which WMCC-TV is significantly viewed. The cost of reimbursing these systems for carriage would be prohibitively expensive

and, as shown in the attached Declaration of Gerald J. Robinson, President of WMCC-TV, Inc., at Exhibit 3 hereto, would result in the station's ceasing operation. The net effect of addition of Marion to the 76.51 designation would be parity in cable homes for all Indianapolis ADI stations.

E. In Other Contexts WMCC-TV Is Treated
As Competitive with Other ADI Stations.

Despite the fact that it is treated unequally by Section 76.51 of the Rules, WMCC-TV nevertheless must compete directly with the other stations in the ADI. As described in greater detail in the attached Declaration of Gerald J. Robinson, vendors of syndicated programming will not sell WMCC-TV the same programming sold to Indianapolis or Bloomington stations (despite the fact that these stations are not entitled to negotiate for exclusivity as against WMCC-TV), and they charge WMCC-TV Indianapolis rates for the purchase of programming. These vendors would not charge stations in Marion and Indianapolis comparable rates if they did not recognize that the stations in fact compete with each other in bidding for the programming.

As stated in Mr. Robinson's Declaration, one hundred per cent of WMCC-TV's local advertising revenues derive from advertisers located in the Indianapolis ADI,

with a significant portion being city of Indianapolis businesses. Advertisers recognize that WMCC-TV serves viewers in Indianapolis and throughout the ADI and, as such, that it competes with Indianapolis and Bloomington stations.

As a further indication that WMCC-TV is competitive in Indianapolis, the local Indianapolis newspaper and the local "TV Guide" provide listings to their readers of WMCC-TV's program schedule. Copies of sample such listings are at Exhibit 4 hereto.

II. THE COMMISSION SHOULD AMEND
76.51(a)(16) TO INCLUDE MARION

As demonstrated above, WMCC-TV competes with the other stations in the Indianapolis-Bloomington ADI. The stations serve congruent areas, and compete with each other for advertisers and for the purchase of syndicated programming.

In light of the above, the Commission should amend Section 76.51 in order to add Marion to the Indianapolis-Bloomington hyphenated television market. Marion is as close or closer to Indianapolis as have been other communities which the Commission has added to existing television markets. For example, at 58 miles to Indianapolis, Marion is closer to that city than is Daytona to Melbourne, Florida. See Major Television

Markets (Orlando-Daytona Beach-Melbourne-Coca, Fla., 57

R.R.2d 685 (1985) (adding Melbourne to the Orlando-Daytona Beach hyphenated market.) Marion is the same distance to Bloomington (roughly 100 miles) than, for example, is Anderson, South Carolina from Asheville, North Carolina, both of which are part of the same hyphenated market. (See Section 76.51(a)(46) of the Rules.)

Nor will addition of Marion unduly burden local cable systems. WMCC-TV is already required to be afforded carriage on all of the cable systems in its ADI -- addition of Marion to the Indianapolis designated market will simply ensure that WMCC may enforce its existing carriage rights without payment of prohibitively expensive copyright fees.

As discussed in Mr. Robinson's attached Declaration, WMCC-TV has lost money every year of its existence. The station, despite its cable competitive disadvantage and continuing financial losses, has remained on the air in the hope that Congress and/or the Commission would redress the inequities in cable carriage and copyright laws which have worked to deny the station comparable treatment to that of its market competitors.

In adopting the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act")

Congress has come close to that goal by requiring that commercial television stations be afforded carriage on cable television systems serving their ADIs. Section 614(f) of the 1992 Act requires the Commission to amend Section 76.51 of its rules as necessary to give effect to the requirements of the mandatory carriage requirements of the 1992 Act. The Commission has recently recognized that amendment of the designations in Section 76.51 is appropriate in cases of "commonality between the proposed community to be added to a market designation and the market as a whole". (Must-Carry Report and Order at 50.) The documentation set forth herein clearly establishes such commonality among Marion, Indianapolis and Bloomington.

WMCC-TV has been forced to compete on an unlevel playing field from the moment it came into existence. Now is the time to correct an artificial regulatory anachronism, and allow WMCC-TV to better serve its market through being restored to competitive parity with the other market stations. This can be accomplished

through expedited issuance and adoption of the requested
Notice of Proposed Rulemaking.

Respectfully submitted,

MARION T.V., INC.

Marcia Cranberg
Reed Miller
Marcia Cranberg
ARNOLD & PORTER
1200 New Hampshire Ave., N.W.
Washington, D.C. 20036
202/872-6700

Its Counsel

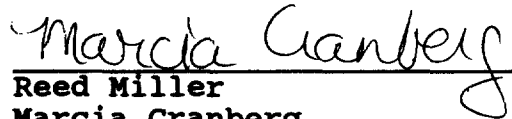
Dated: June 9, 1993

EXHIBIT 1

the above-captioned matter. A copy of the Petition is attached hereto.

Respectfully submitted,

MARION T.V., INC.

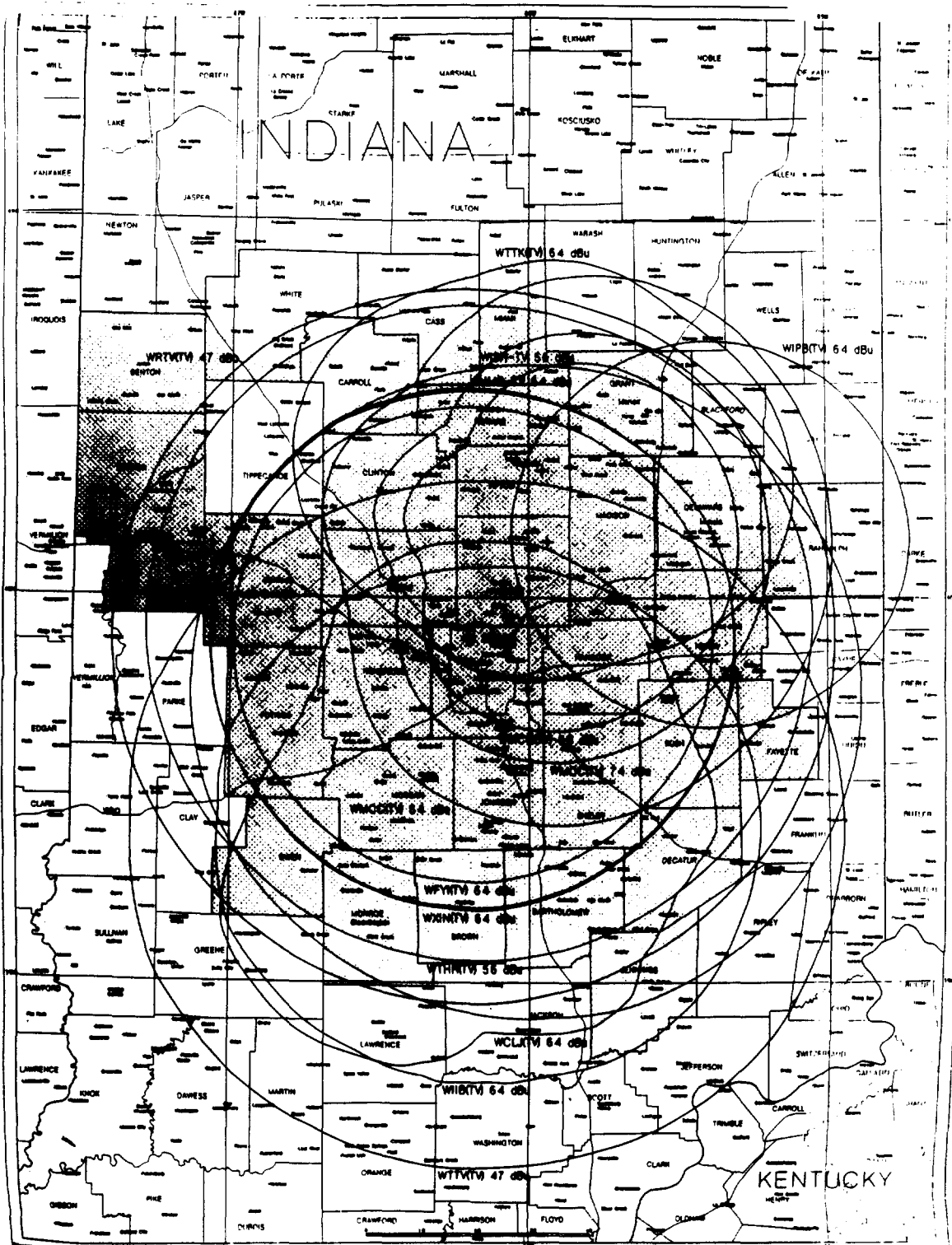


Reed Miller
Marcia Cranberg

ARNOLD & PORTER
1200 New Hampshire Ave., N.W.
Washington, D.C. 20036
202/872-6700

Its Counsel

Date: November 4, 1993



FILE: ADI Market For Indianapolis/Bloomington
 Marion/Kokomo/Muncie
 Prepared by DATAWORLD for Gerald Robinson

April 27, 1993
 Map Center: 39-55-00 86-10-00
 Scale = 1:360,000

EXHIBIT 2

**COMPARISON OF
GRADE B UHF TV COVERAGE
TO THE INDIANAPOLIS ADI**

JUNE 1993

**COHEN, DIPPELL AND EVERIST, P.C.
CONSULTING ENGINEERS
RADIO AND TELEVISION
WASHINGTON, D.C.**

City of Washington)
) ss
District of Columbia)

That he is a graduate electrical engineer, a registered professional engineer in the District of Columbia, and is Secretary-Treasurer of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio-Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005;

That the attached engineering report was prepared by him or under his supervision and direction; and

S. K. Khuntia

Subscribed and sworn to before me this 3rd day of June, 1993.

Notary Public

My Commission Expires:

2/28/98

This engineering report has been prepared on behalf of Marion TV Inc., licensee of Television Broadcast Station WMCC, Marion, Indiana. Station WMCC operates on UHF TV Channel 23 with 5000 kilowatts effective radiated power and 295 meters antenna height above average terrain using a directional antenna. Its antenna site is located in Hamilton County which is the approximate center of the Indianapolis ADI. The computed Grade B contour (64 dBu) of WMCC serves an area of 17,543 square kilometers of which 15,095 square kilometers is within the Indianapolis ADI.

The Grade B service of WMCC has been compared with the four other UHF TV stations which provide commercial service within the Indianapolis ADI (we have not examined Channel 29 in Kokomo). Two are licensed to Indianapolis, while the other two are licensed to Bloomington, Indiana. These four TV stations are: WHMB-TV, WXIN, WIIB and WCLJ. The attached Table I lists the operating UHF TV channel, authorized power and antenna heights of the four TV stations.

Station WMCC has provided a map, prepared by Dataworld, dated April 27, 1993 which shows the computed Grade B contours of the aforementioned five TV stations. This map was utilized to determine the extent of service to the Indianapolis ADI for each station. The area for the portion of the county which receives Grade B service within the ADI was calculated using a polar planimeter in conjunction with the Dataworld map. The areas for the counties were obtained from the U.S. 1990 Census data.

The attached Table II provides the coverage (area) comparison of the five TV stations' Grade B (64 dBu) contours and service to the Indianapolis ADI.

TABLE I
TABULATION OF FACILITIES OF
UHF TV STATIONS
USED FOR COMPARISON OF GRADE B SERVICE
TO THE INDIANAPOLIS ADI
MAY 1993

CALL	LOCATION	CHANNEL	EFFECTIVE RADIATED POWER	ANTENNA HEIGHT ABOVE AVERAGE TERRAIN
				meters
	city,state		kW	
WHMB-TV	INDIANAPOLIS, IN	40	2090 (DA)	302
WXIN	INDIANAPOLIS, IN	59	2090	302
WIIB	BLOOMINGTON, IN	63	1820	328
WCLJ	BLOOMINGTON, IN	42	5000 (DA)	317
WMCC	MARION, IN	23	5000 (DA)	295

COHEN, DIPPELL AND EVERIST, P. C.

TABLE II
COMPARISON OF GRADE B CONTOURS AND
SERVICE TO INDIANAPOLIS ADI^{1/}
MAY 1993

CALL	64 DBU CONTOUR (Square Kilometers)		PERCENT OF SERVICE TO ADI
	TOTAL AREA	SERVICE TO ADI	
WHMB-TV	17,701	15,527	48.3
WXIN	17,717	15,529	48.3
WIIB	18,317	14,996	46.6
WCLJ	15,585	13,212	41.1
WMCC	17,543	15,095	47.0

^{1/}TOTAL AREA WITHIN ADI IS 32,151 SQUARE KILOMETERS

EXHIBIT 3

DECLARATION OF GERALD J. ROBINSON

1. Gerald J. Robinson, President of Marion T.V., Inc., 110 West 11th Avenue, WMCC-TV, Channel 17, Marion, Indianapolis, Indiana, declares the following:

1. I have been the President of Marion T.V., Inc. since 1957, the year that WMCC-TV began operation.

2. I have personally negotiated all programming contracts on behalf of the station since it went on the air. WMCC-TV has a contract with ABC to sell its air time. WMCC-TV is the only station in Indianapolis with a contract with ABC. WMCC-TV is also a member of the Bloomington market station.

3. All of WMCC-TV's local advertisers are located in the Indianapolis ADI. While I have not calculated the precise figures, I know that a significant percentage of the station's advertisers are businesses in Indianapolis itself.

4. Because WMCC-TV is, for copyright purposes, a distant signal on ADI cable systems located more than 35 miles from Marion in communities in which WMCC-TV is not "significantly viewed", WMCC-TV has been unable to secure carriage on such systems. Despite the fact that our competitors in Indianapolis and Bloomington are able to secure carriage on many of these same systems in population centers in the ADI.

5. Even though WMCC-TV is not carried on a number of cable systems serving its ADI, syndicators refuse to sell programming to WMCC-TV at lower rates than they charge Indianapolis stations. This reflects WMCC-TV's reduced viewing area. This is because syndicators recognize that WMCC-TV is part of the Indianapolis ADI, is listed in the Indianapolis programming guides, and competes with Indianapolis stations for viewers.

6. WMCC-TV has lost approximately one million dollars during each year of its operation. When the station initially began operation, the Commission had just adopted new mandatory carriage requirements, and we were hopeful that the inequities in mandatory carriage, copyright law, would be corrected to permit the station to compete on a level playing field with other stations in its market. Instead, the Commission's rules were struck down. Now, with no mandatory carriage requirements, we are faced with declining and little hope for the station. The adoption of the proposed regulations is striking these hopes to extinction and placing the station in a losing battle for the station.